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BEFORE THE
FEDERAL AVIATION ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

14 CFR Part 93	
NPRM on Transborder Slots	**Docket No. FAA-199914971**
Notice No. 99-20	

COMMENTS OF AIR CANADA

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COMMENTS OF AIR CANADA

INTRODUCTION

Air Canada submits these comments on the Federal Aviation Administration's (FAA) Notice of Proposed Rulemaking ("NPRM"), No. 99-20, to amend the regulations governing slots at certain High Density Traffic Airports to conform to the provisions of the "Open Transborder" Agreement (the "1995 Agreement") between the Governments of Canada and the United States.

Air Canada is Canada's largest airline. Together with its regional carriers, Air Canada operates scheduled service to over 120 destinations across Canada, the United States, the Caribbean, Europe, the Middle East and Asia -- including three HDR airports in the U.S. -- New York's LaGuardia Airport, Chicago's O'Hare International Airport, and Ronald Reagan National Airport.

Air Canada supports the general intent behind the FAA's action to codify the provisions of the 1995 Agreement into its slot regulations. However, there are a few

instances in which the proposed rules are ambiguous and/or inconsistent with the principles of the 1995 Agreement. In this regard, Air Canada submits the following comments.

DISCUSSION

Although the principle behind the NPRM is to place U.S. and Canadian carriers on equal footing for the purpose of their transborder operations, Air Canada wishes to note that the principle underlying the NPRM is a bit different from the reality of the marketplace. As a practical matter, Canadian carriers are at a disadvantage *vis-à-vis* U.S. carriers in their access to slot-controlled airports. Without a substantial pool of slots at the HDR airports, Air Canada has often been subject to scheduling headaches when it has found that the timing of the slots in its "base" are unsuitable for its proposed transborder operations. Moreover, as a relatively small operator at the HDR airports it serves, Air Canada often has found that it lacks a sufficient number of slots to make appropriate trades to make its schedules work.

Air Canada is aware of the vigorous debate going on in the United States about the competitive implications of the "buy-sell" rule. Although this proceeding is not an appropriate venue to comment on such proposals, Air Canada strongly urges that the United States accord high priority to liberalization of access to slot-controlled airports, and that transborder operations not be excluded from such proposals.

Following are specific comments on the NPRM:

1. **The time period of each slot forming part of the "Canadian carrier slot base" should be determined by grandfathering the slots presently being operated by Canadian carriers.**

As recognized by the FAA, the equitable intent of the 1995 Agreement was to treat carriers of both countries in the same manner for purposes of slot allocation? On December 16, 1985, slots were allocated to U.S. carriers by grandfathering existing slots to the carriers that held them. To meet the 1995 Agreement's mandate for fair and equal treatment of Canadian carriers with respect to slot allocation, the allocation of slots to Canadian carriers similarly should be accomplished by "grandfathering." What this means is that the "grandfathered" slots should be at the slot time periods during which the Canadian carriers actually operate their transborder services, rather than those slots which the carriers "hold" but which require them to make several trades in order to obtain an appropriate time period for their service pattern.

The importance of specifying what slot times are allocated cannot be overstated. Slots at unattractive time periods may be unsuitable for certain services, particularly business travel. In addition, unattractively timed slots will possess little value in the "buy/sell" market, and also will adversely affect a carrier's ability to trade slots to another carrier for purposes of conducting operations in a different hour or half-hour.

1/ See, U.S.-Canada Air Transport Agreement, Annex II, Section 1, paragraph 1, which provides that "Canadian and United States airlines shall be subject to the same system for slot allocation at United States high density airports as are U.S. airlines for domestic services."

If Canadian carriers are allocated unsuitable slots, then such a result would be contrary to both the express intent and the spirit of the 1995 Agreement. The 1995 Agreement explicitly provided that "with respect to slots made available . . . additional to those held by Canadian airlines as of December 22, 1994, the United States will endeavor to provide such slots at times of the day suitable for transborder air service." U.S.-Canada Air Transport Agreement, Annex II, Section 1, paragraph 2. The U.S. and Canadian Governments clearly contemplated that the slots provided to the Canadian carriers under the 1995 Agreement would be at suitable slot time periods in line with their service needs. In light of the above, Air Canada submits that allocating the Canadian carrier slot base under the foregoing "grandfathering" method will ensure that Canadian carriers are allocated slots at suitable slot time periods, and thus meet the 1995 Agreement's mandate to provide fair and equal treatment to Canadian carriers in this regard.

2. All of the allocated slots forming the slot base agreed upon in the Open Transborder Agreement should be within the "slot-controlled" period at each respective airport.

Air Canada contends that no matter what method of slot time period designation is used by the FAA in allocating the "Canadian carrier slot base" slots, at a minimum, all of the "base level" slots allocated should fall within the controlled slot periods at both LGA and ORD. For the purposes of the rule, a slot outside slot-controlled hours should not be counted as part of a carrier's "base level," as such slots generally can be freely obtained from the FAA, and need not be bought or leased from third parties. For its part, Air Canada notes that, despite its relentless efforts to obtain a better slot, one of its base-level

slots at ORD is for a time outside slot-controlled hours at ORD. To ensure that Air Canada enjoys a full complement of "base level" slots at ORD, and that all of its slots fall within slot-controlled hours, Air Canada would request that its Summer Season ORD slot at 0640 be switched to a 0645 slot so that it would fall within the slot controlled period at ORD (0645 to 2115).

3. **A provision should be added to clarify the right of Canadian carriers to apply for slot exemptions at Ronald Reagan National Airport pursuant to 49 U.S.C. § 41714(d).**

The NPRM does not apply to Ronald Reagan National Airport, which is subject to special slot rules. Although Air Canada acknowledges that there are special rules pertaining to operations at DCA, there is one case in which the principle underlying the NPRM -- that transborder services be treated as "domestic" services, and that U.S. and Canadian carriers be placed on equal footing under the rules -- is not met at DCA. Under 49 U.S.C. § 41714(d), the Secretary may grant an exemption to "an air carrier,' currently holding or operating a slot at DCA to shift the timing of that slot, provided that the conditions set forth therein are met. The language of the statute permits an "air carrier,, to apply for such an exemption.

As a rule, the term "air carrier,, is construed to mean U.S. air carriers. While this language was not problematic in 1994 when the statute was enacted (and before Canadian carriers gained access to DCA), it is now. It is questionable whether a Canadian carrier wishing to seek an exemption which would authorize a retiming of slots under this statute would be able to do so. As the sole non-U.S. carrier serving DCA, Air Canada believes

that this provision may have an unfair discriminatory impact upon Air Canada. Under this provision, U.S. carriers serving the transborder market from DCA could seek relief under the statute, whereas Air Canada's right to do so is unclear. Accordingly, Air Canada requests that the FAA expressly state that it will not interpret the language of this statute narrowly in the event Air Canada were to seek relief under this provision, or that it will seek an amendment to the law which would expressly authorize Canadian carriers to file for exemptions under this provision. Only if this is done will Canadian carriers be accorded the same treatment with respect to slots at DCA as are U.S. carriers.

CONCLUSION

The FAA and the Department have discretion to determine the method by which slots are allocated to Canadian carriers pursuant to the 1995 Agreement. Air Canada contends that this discretion should be exercised in conformity with the intent and spirit of the 1995 Agreement, i.e., to treat Canadian and U.S. carriers in the same manner -- fairly and equally. In order to prevent Canadian carriers from being competitively disadvantaged *vis-à-vis* U.S. carriers, which hold a much larger base of slots, it is imperative that they be provided with slots at time periods suitable for their current services. The best method to accomplish this slot allocation would be for the FM to grandfather the slots Canadian carriers presently are operating. In addition, Air Canada requests that the FAA issue a clarification concerning the right of Canadian carriers to apply for slot exemptions at Ronald

Reagan National Airport under 49 U.S.C. § 41714(d) so that all aspects of slot allocation are equalized as between U.S. and Canadian carriers.

Respectfully submitted,

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